

REFERENCE TITLE: subdivision reports; notice

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# SB 1491

Introduced by  
Senators Gorman: Blendu, McCune Davis

AN ACT

AMENDING SECTIONS 32-2183, 32-2183.02, 32-2185.09, 32-2195.03, 32-2195.11 AND 33-422, ARIZONA REVISED STATUTES; RELATING TO SUBDIVIDED AND UNSUBDIVIDED LANDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2183, Arizona Revised Statutes, is amended to  
3 read:

4 32-2183. Subdivision public reports; denial of issuance;  
5 unlawful sales; voidable sale or lease; order  
6 prohibiting sale or lease; investigations; hearings;  
7 summary orders; recording of public reports and  
8 amendments

9 A. ~~Upon~~ **ON** examination of a subdivision, the commissioner, unless  
10 there are grounds for denial, shall issue to the subdivider a public report  
11 authorizing the sale or lease in this state of the lots, parcels or  
12 fractional interests within the subdivision. The report shall contain the  
13 data obtained in accordance with section 32-2181 and any other information  
14 ~~which~~ **THAT** the commissioner determines is necessary to implement the purposes  
15 of this article. If any of the lots, parcels or fractional interests within  
16 the subdivision are located within territory in the vicinity of a military  
17 airport or ancillary military facility as defined in section 28-8461, under a  
18 military training route as delineated in the military training route map  
19 prepared pursuant to section 37-102 or under restricted air space as  
20 delineated in the restricted air space map prepared pursuant to section  
21 37-102, the report shall include, in bold twelve point font block letters on  
22 the first page of the report, the statements required pursuant to section  
23 28-8484, subsection A, section 32-2183.05 or section 32-2183.06 and, if the  
24 department has been provided a map prepared pursuant to section 28-8484,  
25 subsection B or section 37-102, the report shall include a copy of the map.  
26 The military airport report requirements do not require the amendment or  
27 reissuance of any public report issued on or before December 31, 2001 or on  
28 or before December 31 of the year in which the lots, parcels or fractional  
29 interests within a subdivision become territory in the vicinity of a military  
30 airport or ancillary military facility. The military training route report  
31 requirements do not require the amendment or reissuance of any public report  
32 issued on or before December 31, 2004. The restricted air space report  
33 requirements do not require the amendment or reissuance of any public report  
34 issued on or before December 31, 2006. The commissioner shall require the  
35 subdivider to reproduce the report, make the report available to each  
36 prospective customer and furnish each buyer or lessee with a copy before the  
37 buyer or lessee signs any offer to purchase or lease, taking a receipt  
38 therefor.

39 B. Notwithstanding subsection A of this section, a subdivider may  
40 elect to prepare a final public report for use in the sale of improved lots  
41 as defined in section 32-2101, as follows:

42 1. The subdivider shall prepare the public report and provide a copy  
43 of the report to the commissioner with the submission of the notification  
44 required by sections 32-2181 and 32-2184 and shall comply with all other  
45 requirements of this article.

1           2. An initial filing fee of five hundred dollars or an amended filing  
2 fee of two hundred fifty dollars shall accompany the notification required by  
3 paragraph 1 of this subsection.

4           3. The department shall assign a registration number to each  
5 notification and public report submitted pursuant to this subsection and  
6 shall maintain a database of all of these submissions. The subdivider shall  
7 place the number on each public report.

8           4. The department shall determine within fifteen business days after  
9 the receipt of the notification and public report whether the notification  
10 and public report are administratively complete. The commissioner either may  
11 issue a certification that the notification and public report are  
12 administratively complete or may deny issuance of the certification if it  
13 appears that the application or project is not in compliance with all legal  
14 requirements, that the applicant has a background of violations of state or  
15 federal law or that the applicant or project presents an unnecessary risk of  
16 harm to the public.

17           5. A subdivider may commence sales or leasing activities as permitted  
18 under this article after obtaining a certificate of administrative  
19 completeness from the commissioner.

20           6. Before or after the commissioner issues a certificate of  
21 administrative completeness, the department may examine any public report,  
22 subdivision or applicant that has applied for or received the certificate.  
23 If the commissioner determines that the subdivider or subdivision is not in  
24 compliance with any requirement of state law or that grounds exist under this  
25 chapter to suspend, deny or revoke a public report, the commissioner may  
26 commence an administrative action under section 32-2154 or 32-2157. If the  
27 subdivider immediately corrects the deficiency and comes into full compliance  
28 with state law, the commissioner shall vacate any action that the  
29 commissioner may have commenced pursuant to section 32-2154 or 32-2157.

30           7. The department shall provide forms and guidelines for the  
31 submission of the notification and public report pursuant to this section.

32           C. The commissioner may suspend, revoke or deny issuance of a public  
33 report on any of the following grounds:

34           1. Failure to comply with this article or the rules of the  
35 commissioner pertaining to this article.

36           2. The sale or lease would constitute misrepresentation to or deceit  
37 or fraud of the purchasers or lessees.

38           3. Inability to deliver title or other interest contracted for.

39           4. Inability to demonstrate that adequate financial or other  
40 arrangements acceptable to the commissioner have been made for completion of  
41 all streets, sewers, electric, gas and water utilities, drainage and flood  
42 control facilities, community and recreational facilities and other  
43 improvements included in the offering.

44           5. Failure to make a showing that the lots, parcels or fractional  
45 interests can be used for the purpose for which they are offered.

1           6. The owner, agent, subdivider, officer, director or partner,  
2 subdivider trust beneficiary holding ten per cent or more direct or indirect  
3 beneficial interest or, if a corporation, any stockholder owning ten per cent  
4 or more of the stock in the corporation has:

5           (a) Been convicted of a felony or misdemeanor involving fraud or  
6 dishonesty or involving conduct of any business or a transaction in real  
7 estate, cemetery property, time-share intervals or membership camping  
8 campgrounds or contracts.

9           (b) Been permanently or temporarily enjoined by order, judgment or  
10 decree from engaging in or continuing any conduct or practice in connection  
11 with the sale or purchase of real estate or cemetery property, time-share  
12 intervals, membership camping contracts or campgrounds, or securities or  
13 involving consumer fraud or the racketeering laws of this state.

14           (c) Had an administrative order entered against him by a real estate  
15 regulatory agency or security regulatory agency.

16           (d) Had an adverse decision or judgment entered against him involving  
17 fraud or dishonesty or involving the conduct of any business or transaction  
18 in real estate, cemetery property, time-share intervals or membership camping  
19 campgrounds or contracts.

20           (e) Disregarded or violated this chapter or the rules of the  
21 commissioner pertaining to this chapter.

22           (f) Controlled an entity to which subdivision (b), (c), (d) or (e)  
23 applies.

24           7. Procurement or an attempt to procure a public report by fraud,  
25 misrepresentation or deceit or by filing an application for a public report  
26 that is materially false or misleading.

27           8. Failure of the declaration for a condominium created pursuant to  
28 title 33, chapter 9, article 2 to comply with the requirements of section  
29 33-1215 or failure of the plat for the condominium to comply with the  
30 requirements of section 33-1219. The commissioner may require an applicant  
31 for a public report to submit a notarized statement signed by the subdivider  
32 or an engineer or attorney licensed to practice in this state certifying that  
33 the condominium plat and declaration of condominium are in compliance with  
34 the requirements of sections 33-1215 and 33-1219. If the notarized statement  
35 is provided, the commissioner is entitled to rely on this statement.

36           9. Failure of any blanket encumbrance or valid supplementary agreement  
37 executed by the holder of the blanket encumbrance to contain provisions that  
38 enable the purchaser to acquire title to a lot or parcel free of the lien of  
39 the blanket encumbrance, on completion of all payments and performance of all  
40 of the terms and provisions required to be made or performed by the purchaser  
41 under the real estate sales contract by which the purchaser has acquired the  
42 lot or parcel. The subdivider shall file copies of documents acceptable to  
43 the commissioner containing these provisions with the commissioner before the  
44 sale of any subdivision lot or parcel subject to a blanket encumbrance.

1           10. Failure to demonstrate permanent access to the subdivision lots or  
2 parcels.

3           11. The use of the lots presents an unreasonable health risk.

4           D. It is unlawful for a subdivider to sell any lot in a subdivision  
5 unless one of the following occurs:

6           1. All proposed or promised subdivision improvements are completed.

7           2. The completion of all proposed or promised subdivision improvements  
8 is assured by financial arrangements acceptable to the commissioner. The  
9 financial arrangements may be made in phases for common community and  
10 recreation facilities required by a municipality or county as a stipulation  
11 for approval of a plan for a master planned community.

12          3. The municipal or county government agrees to prohibit occupancy and  
13 the subdivider agrees not to close escrow for lots in the subdivision until  
14 all proposed or promised subdivision improvements are completed.

15          4. The municipal or county government enters into an assurance  
16 agreement with any trustee not to convey lots until improvements are  
17 completed within the portion of the subdivision containing these lots, if the  
18 improvements can be used and maintained separately from the improvements  
19 required for the entire subdivision plat. The agreement shall be recorded in  
20 the county in which the subdivision is located.

21          E. If the subdivision is within an active management area, as defined  
22 in section 45-402, the commissioner shall deny issuance of a public report or  
23 the use of any exemption pursuant to section 32-2181.02, subsection B unless  
24 the subdivider has been issued a certificate of assured water supply by the  
25 director of water resources and has paid all applicable fees pursuant to  
26 sections 48-3772 and 48-3774.01, or unless the subdivider has obtained a  
27 written commitment of water service for the subdivision from a city, town or  
28 private water company designated as having an assured water supply by the  
29 director of water resources pursuant to section 45-576 or is exempt from the  
30 requirement pursuant to section 45-576.

31          F. In areas outside of active management areas, if the subdivision is  
32 located in a county that has adopted the provision authorized by section  
33 11-806.01, subsection F or in a city or town that has enacted an ordinance  
34 pursuant to section 9-463.01, subsection 0, the commissioner shall deny  
35 issuance of a public report or the use of any exemption pursuant to section  
36 32-2181.02, subsection B unless one of the following applies:

37          1. The director of water resources has reported pursuant to section  
38 45-108 that the subdivision has an adequate water supply.

39          2. The subdivider has obtained a written commitment of water service  
40 for the subdivision from a city, town or private water company designated as  
41 having an adequate water supply by the director of water resources pursuant  
42 to section 45-108.

43          3. The plat was approved pursuant to an exemption authorized by  
44 section 9-463.01, subsection K, pursuant to an exemption authorized by  
45 section 11-806.01, subsection G, paragraph 1, pursuant to an exemption

1 granted by the director of water resources under section 45-108.02 and the  
2 exemption has not expired or pursuant to an exemption granted by the director  
3 of water resources under section 45-108.03.

4 4. The subdivision received final plat approval from the city, town or  
5 county before the requirement for an adequate water supply became effective  
6 in the city, town or county, and there have been no material changes to the  
7 plat since the final plat approval. If changes were made to the plat after  
8 the final plat approval, the director of water resources shall determine  
9 whether the changes are material pursuant to the rules adopted by the  
10 director to implement section 45-108.

11 G. A subdivider shall not sell or lease or offer for sale or lease in  
12 this state any lots, parcels or fractional interests in a subdivision without  
13 first obtaining a public report from the commissioner except as provided in  
14 section 32-2181.01 or 32-2181.02. Unless exempt, the sale or lease of  
15 subdivided lands prior to issuance of the public report or failure to deliver  
16 the public report to the purchaser or lessee shall render the sale or lease  
17 rescindable by the purchaser or lessee. An action by the purchaser or lessee  
18 to rescind the transaction shall be brought within three years of the date of  
19 execution of the purchase or lease agreement by the purchaser or lessee. In  
20 any rescission action, the prevailing party is entitled to reasonable  
21 attorney fees as determined by the court.

22 H. Any applicant objecting to the denial of a public report, within  
23 thirty days after receipt of the order of denial, may file a written request  
24 for a hearing. The commissioner shall hold the hearing within twenty days  
25 after receipt of the request for a hearing unless the party requesting the  
26 hearing has requested a postponement. If the hearing is not held within  
27 twenty days after a request for a hearing is received, plus the period of any  
28 postponement, or if a proposed decision is not rendered within forty-five  
29 days after submission, the order of denial shall be rescinded and a public  
30 report issued.

31 I. On the commissioner's own motion, or when the commissioner has  
32 received a complaint and has satisfactory evidence that the subdivider or the  
33 subdivider's agent is violating this article or the rules of the commissioner  
34 or has engaged in any unlawful practice as defined in section 44-1522 with  
35 respect to the sale of subdivided lands or deviated from the provisions of  
36 the public report, the commissioner may investigate the subdivision project  
37 and examine the books and records of the subdivider. For the purpose of  
38 examination, the subdivider shall keep and maintain records of all sales  
39 transactions and funds received by the subdivider pursuant to the sales  
40 transactions and shall make them accessible to the commissioner upon  
41 reasonable notice and demand.

42 J. On the commissioner's own motion, or when the commissioner has  
43 received a complaint and has satisfactory evidence that any person has  
44 violated this article or the rules of the commissioner or has engaged in any  
45 unlawful practice as defined in section 44-1522 with respect to the sale of

1 subdivided lands or deviated from the provisions of the public report or  
2 special order of exemption, or has been indicted for fraud or against whom an  
3 information for fraud has been filed or has been convicted of a felony,  
4 before or after the commissioner issues the public report as provided in  
5 subsection A of this section, the commissioner may conduct an investigation  
6 of the matter, issue a summary order as provided in section 32-2157, or hold  
7 a public hearing and, after the hearing, may issue the order or orders the  
8 commissioner deems necessary to protect the public interest and ensure  
9 compliance with the law, rules or public report or the commissioner may bring  
10 action in any court of competent jurisdiction against the person to enjoin  
11 the person from continuing the violation or engaging in or doing any act or  
12 acts in furtherance of the violation. The court may make orders or  
13 judgments, including the appointment of a receiver, necessary to prevent the  
14 use or employment by a person of any unlawful practices, or which may be  
15 necessary to restore to any person in interest any monies or property, real  
16 or personal, that may have been acquired by means of any practice in this  
17 article declared to be unlawful.

18 K. When it appears to the commissioner that a person has engaged in or  
19 is engaging in a practice declared to be unlawful by this article and that  
20 the person is concealing assets or self or has made arrangements to conceal  
21 assets or is about to leave the state, the commissioner may apply to the  
22 superior court, ex parte, for an order appointing a receiver of the assets of  
23 the person or for a writ of ne exeat, or both.

24 L. The court, on receipt of an application for the appointment of a  
25 receiver or for a writ of ne exeat, or both, shall examine the verified  
26 application of the commissioner and other evidence that the commissioner may  
27 present the court. If satisfied that the interests of the public require the  
28 appointment of a receiver or the issuance of a writ of ne exeat without  
29 notice, the court shall issue an order appointing the receiver or issue the  
30 writ, or both. If the court determines that the interests of the public will  
31 not be harmed by the giving of notice, the court shall set a time for a  
32 hearing and require notice be given as the court deems satisfactory.

33 M. If the court appoints a receiver without notice, the court shall  
34 further direct that a copy of the order appointing a receiver be served on  
35 the person engaged in or engaging in a practice declared to be unlawful under  
36 this article by delivering the order to the last address of the person that  
37 is on file with the state real estate department. The order shall inform the  
38 person that the person has the right to request a hearing within ten days of  
39 the date of the order and, if requested, the hearing shall be held within  
40 thirty days from the date of the order.

41 N. BEGINNING JANUARY 1, 2009, A SUBDIVIDER SHALL RECORD ALL PUBLIC  
42 REPORTS AND ALL AMENDMENTS TO PUBLIC REPORTS IN THE COUNTY IN WHICH THE  
43 SUBDIVIDED LAND IS LOCATED.

1           Sec. 2. Section 32-2183.02, Arizona Revised Statutes, is amended to  
2 read:

3           32-2183.02. Recording of actions

4           A. Whenever the commissioner issues a cease and desist order, obtains  
5 a court order enjoining further sales, issues an order of prohibition or  
6 suspends approval of a subdivision, the action shall be recorded in the book  
7 of deeds in the office of the county recorder in any county in which the  
8 subdivision property is located.

9           B. In the event of revocation of any of the orders which require  
10 recording in subsection A, an order of release shall be recorded in the same  
11 manner.

12           C. THE DEPARTMENT SHALL RECORD A PUBLIC NOTICE IN THE COUNTY IN WHICH  
13 THE SUBDIVIDED LAND IS LOCATED WHEN THE LAND HAS BEEN SUBDIVIDED IN VIOLATION  
14 OF THIS ARTICLE. THE NOTICE SHALL STATE THAT NO BUILDING PERMITS ARE ALLOWED  
15 FOR THE LAND UNTIL THE REQUISITE STATE AND LOCAL APPROVAL IS ACQUIRED. THE  
16 DEPARTMENT SHALL RECORD A RELEASE IN THE SAME MANNER WITHIN FIFTEEN DAYS  
17 AFTER THE SUBDIVISION IS IN COMPLIANCE WITH THIS ARTICLE.

18           Sec. 3. Section 32-2185.09, Arizona Revised Statutes, is amended to  
19 read:

20           32-2185.09. Civil penalties; limitation

21           A. A subdivider or agent who is subject to the jurisdiction of the  
22 department, who violates ~~any provision of~~ this chapter or any rule adopted or  
23 order issued by the commissioner or who engages in any unlawful practices  
24 defined in section 44-1522 with respect to the sale or lease of subdivided  
25 lands may be assessed a civil penalty by the commissioner, after a hearing,  
26 in an amount not to exceed ~~one~~ FIVE thousand dollars for each infraction. An  
27 infraction which concerns more than one lot in a subdivision is a single  
28 infraction for the purposes of this section.

29           B. A proceeding for imposition of a civil penalty or for suspension or  
30 revocation of a license for A violation of ~~any provision of~~ this article or  
31 any rule adopted or order issued by the commissioner must be commenced within  
32 five years of actual discovery by the department or discovery which should  
33 have occurred with the exercise of reasonable diligence by the department.

34           Sec. 4. Section 32-2195.03, Arizona Revised Statutes, is amended to  
35 read:

36           32-2195.03. Unsubdivided land reports; denial of issuance;  
37           order prohibiting sale or lease; investigations;  
38           hearings; summary orders; recording of public  
39           reports and amendments

40           A. ~~Upon~~ ON examination of unsubdivided land, the commissioner, unless  
41 there are grounds for denial, shall prepare and issue to the owner or agent a  
42 public report authorizing the sale or lease of the unsubdivided lands in this  
43 state. The report shall contain the data obtained in accordance with section  
44 32-2195 and any other information which the commissioner determines is  
45 necessary to implement the purposes of this article. If any of the

1 unsubdivided land is located within territory in the vicinity of a military  
2 airport or ancillary military facility as defined in section 28-8461, the  
3 report shall include, in bold twelve point font block letters on the first  
4 page of the report, the statements required pursuant to section 28-8484,  
5 subsection A and, if the department has been provided a map prepared pursuant  
6 to section 28-8484, subsection B, the report shall include a copy of the map.  
7 These report requirements do not require the amendment or reissuance of any  
8 public report issued on or before December 31, 2001 or on or after December  
9 31 of the year in which the unsubdivided land becomes territory in the  
10 vicinity of a military airport or ancillary military facility. The  
11 commissioner shall require the owner or agent to reproduce the report and  
12 furnish each prospective buyer with a copy before the buyer signs an offer to  
13 purchase, taking a receipt therefor.

14 B. Notwithstanding ~~any provision of~~ subsection A of this section, an  
15 owner may prepare a final public report for use in the sale of unsubdivided  
16 lands as defined in section 32-2101, as follows:

17 1. The owner shall prepare the public report and provide a copy of the  
18 report to the commissioner with the submission of the notification required  
19 by sections 32-2195 and 32-2195.10 and shall comply with all other  
20 requirements of this article.

21 2. An initial filing fee of five hundred dollars or an amended filing  
22 fee of two hundred fifty dollars shall accompany the notification required by  
23 paragraph 1 of this subsection.

24 3. The department shall assign a registration number to each  
25 notification and public report submitted pursuant to this subsection and  
26 shall maintain a database of all of these submissions. The owner shall place  
27 the number on each public report.

28 4. The department shall determine within fifteen business days after  
29 the receipt of the notification and public report whether the notification  
30 and public report are administratively complete. The commissioner may either  
31 issue a certification that the notification and public report are  
32 administratively complete or may deny issuance of the certification if it  
33 appears that the application or project is not in compliance with all legal  
34 requirements, that the applicant has a background of violations of state or  
35 federal law or that the applicant or project presents an unnecessary risk of  
36 harm to the public.

37 5. An owner may commence sales or leasing activities as permitted  
38 under this article after obtaining a certificate of administrative  
39 completeness from the commissioner.

40 6. Before or after the commissioner issues a certificate of  
41 administrative completeness, the department may examine any public report,  
42 development or applicant that has applied for or received the certificate. If  
43 the commissioner determines that the owner or development is not in  
44 compliance with any requirement of state law or that grounds exist under this  
45 chapter to suspend, deny or revoke a public report, the commissioner may

1 commence an administrative action under section 32-2154 or 32-2157. If the  
2 owner immediately corrects the deficiency and comes into full compliance with  
3 state law, the commissioner shall vacate any action that he may have  
4 commenced pursuant to section 32-2154 or 32-2157.

5 7. The department shall provide forms and guidelines for the  
6 submission of the notification and public report pursuant to this section.

7 C. The commissioner may deny issuance of a public report on any of the  
8 following grounds:

9 1. Failure to comply with ~~any of the provisions of~~ this article or the  
10 rules of the commissioner pertaining to this article.

11 2. The sale or lease would constitute misrepresentation to or deceit  
12 or fraud of the purchasers or lessees.

13 3. Inability to deliver title or other interest contracted for.

14 4. Inability to demonstrate that adequate financial or other  
15 arrangements acceptable to the commissioner have been made for installation  
16 of all streets, sewers, electric, gas and water utilities, drainage, flood  
17 control and other similar improvements included in the offering.

18 5. Failure to make a showing that the parcels can be used for the  
19 purpose for which they are offered.

20 6. Failure to provide in the contract or other writing the use or  
21 uses, if any, for which the parcels are offered, together with any covenants  
22 or conditions relative to the parcel.

23 7. Failure to demonstrate that adequate financial arrangements have  
24 been made for any guaranty or warranty included in the offering.

25 8. The owner or agent, officer, director or partner or trust  
26 beneficiary holding a ten per cent or more beneficial interest, or, if a  
27 corporation, any stockholder owning ten per cent or more of the stock in the  
28 corporation has:

29 (a) Been convicted of a felony or misdemeanor involving fraud or  
30 dishonesty or involving conduct of any business or a transaction in real  
31 estate, cemetery property, time-share intervals or membership camping  
32 campgrounds or contracts.

33 (b) Been permanently or temporarily enjoined by order, judgment or  
34 decree from engaging in or continuing any conduct or practice in connection  
35 with the sale or purchase of real estate or cemetery property, time-share  
36 intervals, membership camping contracts or campgrounds, or securities or  
37 involving consumer fraud or the racketeering laws of this state.

38 (c) Had an administrative order entered against him by a real estate  
39 regulatory agency or security regulatory agency.

40 (d) Had an adverse decision or judgment entered against him involving  
41 fraud or dishonesty or involving the conduct of any business in or a  
42 transaction in real estate, cemetery property, time-share intervals or  
43 membership camping campgrounds or contracts.

44 (e) Disregarded or violated ~~any of the provisions of~~ this chapter or  
45 the rules of the commissioner pertaining to this chapter.

1 (f) Participated in, operated or held an interest in any entity to  
2 which subdivision (b), (c), (d) or (e) applies.

3 D. No owner or agent may sell or lease or offer for sale or lease  
4 unsubdivided lands without first obtaining a public report from the  
5 commissioner. Any sale or lease of unsubdivided lands prior to issuance of  
6 the public report shall be voidable by the purchaser. An action by the  
7 purchaser to void the transaction shall be brought within three years of the  
8 date of execution of the purchase agreement by the purchaser. In any  
9 avoidance action the prevailing party is entitled to reasonable attorney fees  
10 as determined by the court.

11 E. Any applicant objecting to the denial of a public report, within  
12 thirty days after receipt of the order of denial, may file a written request  
13 for a hearing. The commissioner shall hold the hearing within twenty days  
14 after receipt of the request for a hearing unless the party requesting the  
15 hearing requests a postponement. If the hearing is not held within twenty  
16 days after a request for a hearing is received plus the period of any  
17 postponement, or if a proposed decision is not rendered within forty-five  
18 days after submission, the order of denial shall be rescinded and a public  
19 report issued.

20 F. On the commissioner's own motion, or when the commissioner has  
21 received a complaint and has satisfactory evidence that the owner or agent is  
22 violating ~~any provision set forth in~~ this article or the rules of the  
23 commissioner or has engaged in any unlawful practice as defined in section  
24 44-1522 with respect to the sale of unsubdivided lands or deviated from the  
25 provisions of the public report, the commissioner may investigate the  
26 subdivision project and examine the books and records of the owner or agent.  
27 For the purpose of examination, the owner or agent shall keep and maintain  
28 records of all sales transactions and funds received by the owner or agent  
29 pursuant to the sales transactions and shall make them accessible to the  
30 commissioner upon reasonable notice and demand.

31 G. On the commissioner's own motion, or when the commissioner has  
32 received a complaint and has satisfactory evidence that grounds exist as  
33 provided in subsection C of this section or that any person has engaged in  
34 any unlawful practice as defined in section 44-1522 with respect to the sale  
35 of unsubdivided lands or deviated from ~~the provisions of~~ the public report,  
36 the commissioner may conduct an investigation of the matter, issue a summary  
37 order as provided in section 32-2157, or hold a public hearing and, after the  
38 hearing, may issue the order or orders the commissioner deems necessary to  
39 protect the public interest and ensure compliance with the law, rules or  
40 public report. If, after the hearing, the violation of the law, rules or  
41 public report continues, the commissioner may bring an action in any court of  
42 competent jurisdiction against the person to enjoin the person from  
43 continuing the violation or engaging in or doing any act or acts in  
44 furtherance of the violation.

1 H. BEGINNING JANUARY 1, 2009, BEFORE AN OWNER MAY SELL UNSUBDIVIDED  
2 LAND, THE OWNER SHALL RECORD ALL PUBLIC REPORTS AND ALL AMENDMENTS TO PUBLIC  
3 REPORTS IN THE COUNTY IN WHICH THE UNSUBDIVIDED LAND IS LOCATED.

4 Sec. 5. Section 32-2195.11, Arizona Revised Statutes, is amended to  
5 read:

6 32-2195.11. Civil penalties; limitation

7 A. An owner or agent who is subject to the jurisdiction of the  
8 department and who violates any provision of this chapter relating to the  
9 sale or lease of unsubdivided lands or any rule adopted or order issued by  
10 the commissioner relating to the sale or lease of unsubdivided lands or who  
11 engages in any unlawful practices defined in section 44-1522 with respect to  
12 the sale or lease of unsubdivided lands may be assessed a civil penalty by  
13 the commissioner, after a hearing, in an amount of not more than ~~one~~ FIVE  
14 thousand dollars per infraction. An infraction that concerns more than one  
15 lot among unsubdivided lands is a single infraction for the purposes of this  
16 section.

17 B. A proceeding for the imposition of a civil penalty or for  
18 suspension or revocation of a license for a violation of this article or any  
19 rule adopted or order issued by the commissioner must be commenced within the  
20 earlier of five years of either of the following:

21 1. Actual discovery by the department.

22 2. Discovery that should have occurred if the department was  
23 reasonably diligent.

24 Sec. 6. Section 33-422, Arizona Revised Statutes, is amended to read:

25 33-422. Land divisions; recording; disclosure affidavit

26 A. A seller of five or fewer parcels of land, other than subdivided  
27 land, in an unincorporated area of a county and any subsequent seller of such  
28 a parcel shall furnish a written affidavit of disclosure to the buyer, at  
29 least seven days before the transfer of the property, and the buyer shall  
30 acknowledge receipt of the affidavit.

31 B. The affidavit must be written in twelve point type.

32 C. No release or waiver of a seller's liability arising out of any  
33 omission or misrepresentation contained in an affidavit of disclosure is  
34 valid or binding on the buyer.

35 D. The buyer has the right to rescind the sales transaction for a  
36 period of five days after the affidavit of disclosure is furnished to the  
37 buyer.

38 E. The seller shall record the executed affidavit of disclosure at the  
39 same time that the deed is recorded. The county recorder is not required to  
40 verify the accuracy of any statement in the affidavit of disclosure. A  
41 subsequently recorded affidavit supersedes any previous affidavit.

42 F. The affidavit of disclosure shall meet the requirements of section  
43 11-480 and follow substantially the following form:

When recorded mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Affidavit of Disclosure  
Pursuant to A.R.S. §33-422

I, \_\_\_\_\_ (seller(s))  
being duly sworn, hereby make this affidavit of disclosure  
relating to the real property situated in the unincorporated  
area of:

\_\_\_\_\_, County, State of Arizona, located at:

\_\_\_\_\_ and legally described as:

(Legal description attached hereto as exhibit "A")  
(property).

1. There  is  is not . . . . legal access to the property, as  
defined in A.R.S. § 11-809 . . . .  unknown

Explain: \_\_\_\_\_  
\_\_\_\_\_

2. There  is  is not . . . . physical access to the property.  
 unknown

Explain: \_\_\_\_\_  
\_\_\_\_\_

3. There  is  is not . . . . a statement from a licensed  
surveyor or engineer available stating whether the property has  
physical access that is traversable by a two-wheel drive passenger  
motor vehicle.

4. The legal and physical access to the property  is  is not  
. . . . the same.... unknown  not applicable.

Explain: \_\_\_\_\_  
\_\_\_\_\_

*If access to the parcel is not traversable by emergency  
vehicles, the county and emergency service providers may not be  
held liable for any damages resulting from the inability to  
traverse the access to provide needed services.*

5. The road(s) is/are  publicly maintained  privately  
maintained  not maintained  not applicable. If  
applicable, there  is  is not . . . . a recorded road  
maintenance agreement.

- 1            *If the roads are not publicly maintained, it is the*  
2            *responsibility of the property owner(s) to maintain the roads*  
3            *and roads that are not improved to county standards and accepted*  
4            *for maintenance are not the county's responsibility.*
- 5    6. A portion or all of the property  is  is not . . . .  
6            located in a FEMA designated regulatory floodplain. If the  
7            property is in a floodplain, it may be subject to floodplain  
8            regulation.
- 9    7. The property  is  is not subject to  fissures or  
10            expansive soils.  unknown  
11           Explain: \_\_\_\_\_  
12           \_\_\_\_\_  
13           \_\_\_\_\_
- 14    8. The following services are currently provided to the property:  
15            water  sewer  electric  natural gas  single  
16           party telephone  cable television services.
- 17    9. The property  is  is not . . . . served by a water supply  
18           that requires the transportation of water to the property.
- 19    10. The property is served by  a private water company  a  
20           municipal water provider  a private well  a shared well  
21            no well. If served by a shared well, the shared well  is  
22            is not . . . . a public water system, as defined by the safe  
23           drinking water act (42 United States Code § 300f).  
24           *Notice to buyer: If the property is served by a well, A private*  
25           *water company or a municipal water provider the Arizona*  
26           *department of water resources may not have made a water supply*  
27           *determination. For more information about water supply, contact*  
28           *the water provider.*
- 29    11. The property  does have  does not have . . . . an on-site  
30           wastewater treatment facility (i.e., standard septic or  
31           alternative system to treat and dispose of wastewater).  
32            unknown. If applicable: a) The property  will  will not  
33           . . . . require installation of an on-site wastewater treatment  
34           facility; b) The on-site wastewater treatment facility  has  
35            has not been inspected.
- 36    12. The property  has been  has not been . . . . subject to a  
37           percolation test.  unknown.
- 38    13. The property  does  does not . . . . meet the minimum  
39           applicable county zoning requirements of the applicable zoning  
40           designation.
- 41    14. The sale of the property  does  does not . . . . meet the  
42           requirements of A.R.S. § 11-809 regarding land divisions. If those  
43           requirements are not met, the property owner may not be able to  
44           obtain a building permit. The seller or property owner shall  
45           disclose each of the deficiencies to the buyer.

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Explain: \_\_\_\_\_  
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15. The property  is  is not located in the clear zone of a military airport or ancillary military facility, as defined in A.R.S. § 28-8461. (Maps are available at the state real estate department's web site.)

16. The property  is  is not located in the high noise or accident potential zone of a military airport or ancillary military facility, as defined in A.R.S. § 28-8461. (Maps are available at the state real estate department's web site.)

17. Notice: If the property is located within the territory in the vicinity of a military airport or ancillary military facility, the property is required to comply with sound attenuation standards as prescribed by A.R.S. § 28-8482. (Maps are available at the state real estate department's web site.)

18. The property  is  is not located under military restricted airspace.  unknown. (Maps are available at the state real estate department's web site.)

This affidavit of disclosure supersedes any previously recorded affidavit of disclosure.

I certify under penalty of perjury that the information contained in this affidavit is true, complete and correct according to my best belief and knowledge.

Dated this \_\_\_\_\_ (date) day of \_\_\_\_\_ (year) by:

Seller's name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

Seller's name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

State of Arizona )

) ss.

County of \_\_\_\_\_)

Subscribed and sworn before me this \_\_\_\_\_ (date) day of \_\_\_\_\_ (year), by \_\_\_\_\_.

\_\_\_\_\_  
Notary public

My commission expires: \_\_\_\_\_ (date)

Buyer(s) hereby acknowledges receipt of a copy of this affidavit of disclosure this \_\_\_\_\_ (date) day of \_\_\_\_\_ (year)

Buyer's name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

Buyer's name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

19. USE OF THE PROPERTY  IS  IS NOT LIMITED IN ANY WAY RELATING TO DEVELOPMENT DUE TO A LIS PENDENS, A COURT CASE, A COURT ORDER, A LOCAL ORDINANCE OR A STATE REAL ESTATE DEPARTMENT ORDER. IF THE USE OF THE PROPERTY IS LIMITED, THE SELLER OR PROPERTY OWNER SHALL DISCLOSE THE LIMITATIONS TO THE BUYER.

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EXPLAIN: \_\_\_\_\_  
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G. For the purposes of this section, seller and subsequent seller do not include a trustee of a deed of trust who is selling property by a trustee's sale pursuant to title 33, chapter 6.1 or any officer who is selling property by execution sale pursuant to title 12, chapter 9 and title 33, chapter 6. If the seller is a trustee of a subdivision trust as defined in section 6-801, the disclosure affidavit required by this section shall be provided by the beneficiary of the subdivision trust.